

**STATEMENT  
OF  
JACOB VIARRIAL  
GOVERNOR OF THE PUEBLO OF POJOAQUE,  
STATE OF NEW MEXICO  
BEFORE THE  
COMMITTEE ON INDIAN AFFAIRS  
UNITED STATES SENATE  
CONCERNING  
DIFFICULTIES OF NEGOTIATING REVENUE SHARING AGREEMENTS  
WITH THE STATE OF NEW MEXICO  
AND  
USE OF GAMING REVENUES BY THE PUEBLO**

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**PRESENTED ON  
JULY 9, 2003  
DIRKSEN SENATE OFFICE BUILDING, ROOM 106  
WASHINGTON, D.C.**

**Honorable Committee:**

**My name is Jacob Viarrial. I have been the Governor of the Pueblo of Pojoaque for 15 years. The Pueblo is located 20 miles north of Santa Fe, New Mexico.**

**Thank you for having this hearing. It is a Godsend. It gives the gaming Tribes a chance to explain to Congress all the atrocities that the States are doing to us. How the States are forcing us to give them the money which Congress intended for our Tribal needs.**

**The States are costing us millions of dollars in the courts and for gaming compacts. These millions of dollars should be used for Tribal needs.**

**Compact negotiations have become a smokescreen for extortion. At least one of the 13 gaming Tribes in New Mexico has been in contentious gaming negotiations or litigation with the State since 1988.**

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**Some States tend to use the Mashantucket Pequot-Connecticut compact as a gauge for all gaming compacts. This is wrong. The Pequots have a good location and an enormous population market. The 13 gaming Tribes in New Mexico are mostly in rural or small city areas.**

**Some States may argue that they have “given” exclusive gaming rights to the Tribes. This is not the case in New Mexico. New Mexico has legalized a wide variety of gaming. The smaller New Mexico population market is covered by a wide variety of Indian and non-Indian gaming establishments. Slot machines are allowed at over 40 fraternal, veteran and non-profit locations. There are 1,200 lottery retailers within the State. The Pueblo of Pojoaque has ten Tribal casino competitors and a State-licensed “racino” within a hundred-mile radius. Three other racinos are**

**open within the State. The racinos combine slot machines and horse racing.**

**A new racino is scheduled to open soon. The number of fraternal, veteran and non-profits with slot machine licenses grow annually.**

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**Essentially, the States have ignored the Indian Gaming Regulatory Act.**

**The Indian Gaming Regulatory Act says, “. . . nothing in this section shall be interpreted as conferring upon a State. . . authority to impose any tax, fee, charge, or other assessment upon an Indian Tribe to engage in a class iii activity.”**

**Yet the States demand hundreds of millions of dollars for a compact.**

**The problem begins with Interior. Revenue sharing is not part of The Indian Gaming Regulatory Act. Yet, the Interior Department admits that it has a revenue sharing policy. The informal revenue sharing policy is at the root of the revenue sharing problem. The informal policy was not adopted according to the Administrative Procedure Act. No one really knows what the revenue sharing policy is. We have filed a lawsuit against Interior to make them follow the APA and explain the policy so that we all understand it.**

**Interior says that if the State can be paid for giving the Tribes exclusive rights to gaming. Yet, in 1997, Interior did not require any market studies to show that what New Mexico was demanding was worth what we were forced to pay. Without enforceable rules, the States have run amok. And Interior just stands by.**

**Please ask Interior about the revenue sharing policy. Maybe you can make heads or tails the way it is applied and the way it has changed over the years.**

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**It would be better if the States were written out of the Indian Gaming Regulatory Act.**

**The problems begin the day of negotiations. And, as we all know, the Indian Gaming Regulatory Act says that we must negotiate a gaming compact before we can have class III gaming.**

**In 1995, we negotiated a good-faith compact with the State Governor. Some New Mexico legislators filed a lawsuit challenging the Governor's authority to negotiate. The court agreed with the legislators. The court said that the legislature must be included in the negotiations.**

**We didn't get a new compact until we agreed to pay the State 16% of our slot machine revenue. The State demanded that their cut comes "off the top." We are not allowed to deduct the costs of making the money before we give the State their cut.**

**We were treated like a special interest group during the supposed negotiations. The negotiations amounted to us submitting bills to the New Mexico legislature. Then we watched as the different committees hiked the percentages, cut out provisions, and added provisions that didn't have anything to do with the IGRA. The State told us how many hours we could open, that we couldn't offer comps to our customers, we had to share jurisdiction, we couldn't make political donations, and put in many other prohibitions.**

**Then, the U.S. Attorney said he would close us down if we didn't have a compact after the 1997 legislative session. We signed the 1997 compact and reserved our rights to challenge issues that went against the IGRA.**

**We started to pay the 16%. Soon our Tribal programs suffered, so we stopped paying the**

State. Eventually all of the gaming Tribes refused to pay the 16%. The State sued us in 2000 to make us pay. But the State saw the error of their greedy ways. In 2001, the State offered us a new half-price compact at 8%. But we could only get the new compact if we paid 16% up to the point that we signed the new compacts. The Pueblo of Pojoaque and the Mescalero Apache Tribes refused to pay the 16% backpayment.

The 1997 compacts expire in 2006. If we lose in court, we will have to pay almost \$30 million dollars to the State in 2006. We don't have that kind of money.

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The Indian Gaming Regulatory Act says that if a State does not negotiate a compact in good faith, the Tribes can sue that State.

Florida and 25 State Attorney Generals challenged this provision of the IGRA. The lawsuit argued that the IGRA provision violated the 11<sup>th</sup> Amendment. The United States Supreme Court agreed with Florida's position. Now the Tribes cannot sue the States.

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The Indian Gaming Regulatory Act says if the States do not negotiate a compact, the Tribes can go to the Secretary of Interior and ask for procedures for a gaming compact. My Tribe has looked at not negotiating with New Mexico when they demand so much of our money.

We found out that the Secretary of Interior did issue procedures in 1999. Alabama and Florida challenged these procedures in court. Senator Michael Enzi from Wyoming and Senator Slade Gorton from Washington State offered amendments to prohibit the Secretary from implementing the procedures. So Interior will not implement the procedures while the court case is pending.

**Now the Tribes cannot go to the Secretary of Interior when the State negotiates in bad faith.**

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**The Indian Gaming Regulatory Act says that the only assessment the State can charge is for regulatory activity.**

**Regulatory costs for the State are around \$100,000 per year, but my Tribe is charged over a million dollars per year in addition to the 16%.**

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**My gaming Tribe will be the first victim to fail in Indian country. The State will have maneuvered us into failing. Without the State's interference, we could be very successful.**

**Our present compact ends in three years. By that time, we will owe the State almost 30 million dollars. If we don't pay, we cannot get a new compact. If we don't get a new compact, the U.S. Attorney or the national Indian Gaming Commission might want to close us down. And all because the State wants our money.**

**We would like Congress to set up a procedure to prohibit the U.S. Attorney and the National Indian Gaming Commission from shutting us down if we have not yet resolved our differences with the State.**

**Only Congress can save us from the inhumane treatment by the States.**

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**We have spent gaming money the way that Congress intended. We employ 450 people in gaming. We employ 150 minor and adult Pueblo members through gaming money. This year we spent: \$280,000 in gaming money on our after-school programs, tutoring and youth activities;**

**\$300,000 in gaming money on day-care programs; \$50,000 on foster care; \$350,000 in gaming money on scholarships, tuition and books for our post-high school students; \$150,000 in gaming money on cultural preservation and expansion of our Tribal buffalo herd; \$450,000 in gaming money on our law enforcement program that protects Indians and non-Indians in the Pueblo; \$735,000 in gaming money on our cultural program and acquisitions for the museum; \$370,000 in gaming money on cultural education programs to keep alive the traditions and arts of the Pueblos; \$250,000 in gaming money on our Pueblo Tribal government services; and \$1,200,000 in gaming money on utility improvements. We spend millions in gaming money on our economic expansion so that when gaming is gone, we will still prosper.**

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**But wherever we turn, the States have us boxed in because they want our money. Some States say that now that the Tribes are making money, the States deserve their share of that money. This is wrong. We deserve what we earn. We have suffered enough over the centuries. Let us prosper for awhile. Must our resources always be taken for the benefit of others?**

**The States have proven that they are a detriment to Indian gaming. Please get the States out of The Indian Gaming Regulatory Act.**